MONTANA LEGISLATIVE HISTORY

Chapter 135 1995

Bill H _____ S 239 Original bill & history ___C

H. Committee on Business & Labor			S. Committee on Business & Industry		
Hearing Date(s)	Mar 01	✓ C	Hearing Date(s)	Feb 08	✓ C
	_____	___C		Feb 16	✓ C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	Mar 01	✓ C		Feb 16	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SB 238 INTRODUCED BY VAN VALKENBURG, ET AL.

EXEMPT TEMPORARY UNIVERSITY SYSTEM EMPLOYEES WHO HAVE NEGOTIATED AN ALTERNATIVE BENEFITS PACKAGE THROUGH COLLECTIVE BARGAINING WITH THE UNIVERSITY SYSTEM FROM REQUIREMENTS TO PAY CERTAIN STATE-MANDATED BENEFITS

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/26	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/07	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	49	0
2/13	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/14	FIRST READING		
2/15	REFERRED TO BUSINESS & LABOR		
3/03	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	90	8
3/06	3RD READING CONCURRED	94	5
	RETURNED TO SENATE		
3/07	SIGNED BY PRESIDENT		
3/07	SIGNED BY SPEAKER		
3/08	TRANSMITTED TO GOVERNOR		
3/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 121		
	EFFECTIVE DATE: 03/10/95		

SB 239 INTRODUCED BY VAN VALKENBURG, ET AL.

PROVIDE THAT THE BEER WHOLESALER INTERBRAND COMPETITION LAW DOES NOT APPLY TO BRANDS PRODUCED IN LIMITED QUANTITIES

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO BUSINESS & INDUSTRY		
2/08	HEARING		
2/08	TABLED IN COMMITTEE		
2/16	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	28	22
2/18	3RD READING PASSED	27	23
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/01	HEARING		
3/02	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/03	2ND READING CONCURRED	92	8
3/04	3RD READING CONCURRED	90	8
	RETURNED TO SENATE WITH AMENDMENTS		
3/08	2ND READING AMENDMENTS CONCURRED	48	0
3/09	3RD READING AMENDMENTS CONCURRED	45	2
3/11	SIGNED BY PRESIDENT		
3/11	SIGNED BY SPEAKER		
3/13	TRANSMITTED TO GOVERNOR		
3/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 139		
	EFFECTIVE DATE: 10/01/95		

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE asked **Dan Elliott** if it felt good to finally agree with Montana Power Company. **Mr. Elliott** replied that indeed it did.

Closing by Sponsor:

REP. HANSON related HB 138 was needed. He would appreciate the Committee's approval.

Discussion: **CHAIRMAN HERTEL** asked **REP. HANSON** if the bill was concurred in by the Committee, who would carry the bill on the Senate Floor. **SEN. SPRAGUE** volunteered to carry it.

HEARING ON SB 239

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, Missoula, said SB 239 would amend the "call frequency provisions" of the Beer Wholesaler Law to essentially make the call frequency provision only applicable to the distribution of beers that were produced in excess of 250,000 barrels a year, nationally. He declared the reason the bill was before the Committee was largely as a result of the rise in micro beers in the beer market, not only in the country, but in Montana.

SEN. VAN VALKENBURG stated decades ago there were microbreweries all over. Those breweries went out of business as national advertising took over and consumer taste became more homogenous. In 1987 the Buttrey Food chain store was making noises to the effect that they were going to start up their own brand of beer and distribute it only in Buttrey's stores. There was concern, so the Montana Legislature adopted a "call frequency provision" in the law that anyone distributing beer in Montana had to offer it to 75% of the retailers. He remarked whether or not that was wise legislation, it was passed and currently was the law.

Subsequent to 1987, micro beers had become very popular and **SEN. VAN VALKENBURG** asserted there was a significant market for them. The problem was that micro beers could not be produced in quantities that could be offered to every store in Montana. Vehrs Distributing in Missoula specialized in the distribution of micro beers and other alcohol related products. They had run into a road block in the distribution of some of those products because the Montana Beer and Wine Wholesalers Association had said they must offer those products to 75% of the Montana retailers or they could not distribute in those areas. There was a lawsuit filed and pending in the Missoula area on that issue and Vehrs Distributing had said they weren't sure they could win

the lawsuit as the statute was clear. Vehrs Distributing did not think this was an appropriate law and this bill was offered to amend the issue. **SEN. VAN VALKENBURG** stated **HB 239** was a free market issue, one in which he hoped this Committee had an open mind to.

Proponents' Testimony:

Tim Geiszler, Vehrs Mountain State Beverage, said **HB 239** was submitted to promote more fair competition between beer wholesalers in Montana. He stated more specifically, between micro beer distributors and the major brewers. He said Coors, Budweiser, Miller, and were the largest brewers in the country and they had 80% of the market share. He declared if the second tier brewers were added, they had over 90% of the beer market.

Mr. Geiszler presented "Facts In Support of **SB 239**", **EXHIBIT #1,** and referred to the second page. He stated this gave an idea how small were those microbreweries. He maintained most of the microbreweries offered in Montana represented less than half of one percent of the market shares. They were talking about narrow market availability. In 1993 there were about 200 microbreweries in the country and in 1994 about 300. He declared it was an increasing industry. He said the statute they requested to have modified was 16-3-220. He said it required beer wholesalers to offer products to 75% of the retail licensees once every three weeks. He expressed the purpose of the statute was found in section 17 and was to ensure competition among beer wholesalers. **Mr. Geiszler** announced that was what was wanted, but because of the call frequency provision the wholesalers of micro beer were burdened and handicapped.

Mr. Geiszler said when the call frequency statute was passed by the 1987 Legislature, it was proposed and supported by the Montana Beer and Wine Wholesalers Association. **Mr. Tippy, Vehrs Wine, Inc,** had explained to **Mr. Geiszler** why the legislature passed this call frequency statute, that reason was due to Buttrey's decision to market an Alpha Beta beer produced by a company in Seattle. They planned to bring in a couple of train loads of the beer to the Great Falls depot, put it in the warehouse and then distribute via their food trucks to the Buttrey stores around the state.

Mr. Geiszler related this circumvented the beer wholesalers in Billings and Kalispell. He stated at that time it was probably legal for Buttrey Foods to have done that; however, in response to that, the association proposed the 75% call frequency provision. Buttrey's had to offer their alpha beta beer to 75% of the retailers, which made it uneconomical for them. He stated the law was passed and Buttrey Foods abandoned the enterprise; the purpose for the bill was served.

Mr. Geiszler stated the reason they were here was the fact that micro beers were not largely available, their quantity of

production was small and distribution limited; with Budweiser, Miller or Coors, the market was unlimited. He declared that was not the marketing plan of the microbrewers.

Mr. Geiszler presented two letters from The Redhook Ale Brewery, one dated January 21, 1994, **EXHIBIT #2**, and the other dated May 6, 1994, **EXHIBIT #3**, both letters related they could not have given the distributor all the beer they wanted. He stated **SB 239** carved out an exception to the statute, which was for small capacity breweries of less than 250,000 barrels per year, to be eliminated from the call frequency provision. He related if the product was not available, the brewery should not be obligated by statute to offer the product for sale. He said the law imposed an unfair burden on micro beer wholesalers. They had to offer the beer but couldn't sell it because they didn't have it. He asserted this was not a blacklist, obviously, if the brewery had it they would want to sell it.

Mr. Geiszler reported the statute section of **Exhibit #1**, section 219 of the codes, stated any retail licensee in the state could purchase from the warehouse of the distributor anything the distributor had available. He claimed the statutes were structured so no one could be shut out. He stated they were here asking the Committee to support and pass this bill to remove the obstacles of this competition. He related in addition they had letters from individual business people who could not appear but had written letters to be presented to the Committee. **EXHIBIT #4, Whitefish Brewing Company; EXHIBIT #5, Sierra Nevada Brewing Company; EXHIBIT #6, Bayern Brewing Inc;** and **EXHIBIT #7, Rock'n M Brewing Company. Mr. Geiszler** read the written testimony of **Arthur Galloway, owner, Topper's Market, EXHIBIT #8.**

Tim Nash, President of Vehrs, brought some samples of micro beer products. He said those products were expensive and handcrafted. He conveyed five years ago they had six employees, today they had 22. He maintained they were considered a small beer and wine wholesaler by Montana standards. He related micro beer history was a major part of their business. He remarked they dealt in fine wines and specialty beers, specifically micro and they also dealt with imported beers. When **Mr. Nash** said "small" by Montana standards, what he meant was they did not represent any of the major national brewers.

Mr. Nash passed out the 1995 Beer Report, **EXHIBIT #9**, to the Committee members. He stated national breweries, like Budweiser, regularly produced 87.5 million barrels. The reason they were here was because the law was outdated, was inhibitive to their businesses and caused excessive costs to their company and small distributors. He said it provided a very unusual thing because it was protectionistic to the large breweries because of the 75% ratio call.

Mr. Nash and his salesmen had to go to each account, tell them about a micro beer that they had no supply of, in order to sell

it to them; making no sense. He expressed micro beers could not produce enough beer to stock all outlets. He asserted the big breweries had an unlimited supply. They weren't saying the 75% call ratio was unfair. What they were requesting of the Committee was to change the amount of barrels to less than 250,000. He maintained this would ensure when the beverage was required to be offered to 75% of the businesses, there would be enough of it to have in supply to sell to the businesses. He claimed in 1987 when this law was passed there was only one brewery and now there were 9 breweries. **Mr. Nash** said there were a lot of small breweries cropping up across the state. From what he understood, in a very short time, every city in Montana would have their own brewery. He said if they had to deal with the 75% call issue in Montana they wouldn't make it. He said Montana Beer and Wine Wholesalers opposed this change in the law, and of the membership of that group, 90% of the members were Budweiser, Coors, and Miller houses. **Vehrs** was not opposed to this bill.

Mr. Nash stated in essence the wholesaler was not allowed to have any control whatsoever over the operation of the retailer. He maintained this was called the Wall of Separation which existed between brewers and wholesalers and also existed between wholesalers and retailers. He related in this situation not a single distributor could pick and choose the retailers to whom it sold as they would obviously pick the best retailer (which was not true), and thereby gain control over the retailers, which would otherwise be prohibited. He told the committee the call ratio statute was enacted for the purpose of precluding undue control over a retailer by a wholesaler. He had been in the business since 1978 and he had never seen that happen. He had never seen the wholesaler have control over the retailer and it did not make sense.

Mr. Nash remarked the Montana beer and wine wholesalers believed the integrity of this policy should be maintained; making an exception for microbreweries was the first step to allowing larger breweries to cherry pick their accounts. He said this did not make sense since larger breweries had an unlimited supply of beer and could not cherry pick their accounts. His business did not cherry pick accounts. By law he must offer his product to 75% of the retailers, and if he ran out of the product, he could not sell it because he didn't have it.

Mr. Nash contended where this had happened in other states, the result had been that some wholesalers had attained not only undue influence over retailers but an unfair advantage over other wholesalers. **Mr. Nash** didn't understand that and had never seen this happen; therefore, in conclusion, they were not asking the Committee to take away the 75% call ratio, but asking the Committee to change the barrelage amount, to allow small breweries to comply until they had the supply to sufficiently sell to 75% of the retailers.

Joe Roberts, Owner, Queen City Cafe, stated he was a professional lobbyist but was not appearing in that capacity, appearing only as a small business owner. He didn't have a problem with the original intent of this legislation. He said the way this law was being enforced today was an unintended consequence to the legislation. As a retailer in this three tier system, **Mr. Roberts,** was in a somewhat similar position as the consumer. He wanted to have as many choices as he could as far as buying products. He explained the effect of this law was to say he had to deal with the distributor in Helena. He declared if there was a distributor in another part of Montana that wanted to come in and bring him specialty products, that was what he wanted. He wanted to have some freedom of choice.

Mr. Roberts remarked there was a distributor in town that had not called on him in three years. He made the decision early on that his cafe was not going to use the distributor's business and **Mr. Roberts** hadn't seen him during those three years; that was fine. He was sure if he had wanted the product, all he had to do was call him. He guessed he was part of the 25% the businessman didn't call on.

Mr. Roberts still would like to know how this law was enforced. Did the liquor division follow those people around to make sure they called on 75% of the potential retail outlets in the market every three weeks. It seemed to him if this law were truly enforced it would be a totally unwieldy and costly bureaucratic process. He believed the only way it really was enforceable was in the context of lawsuits from one distributor saying to another that that distributor was invading someone's territory. **Mr. Roberts** said the whole liquor area was just filled with regulations. This statute was just another example of government meddling in business affairs and **Mr. Roberts** said to let the marketplace work.

Gene Grosovich, B.Y.E. Beverage, Billings, related in 1995 there were 75,200 barrels of micro beer of the 186,000,800 barrels sold; that represented .004% of the total beer consumption. He stated in 1993 there were 1.7 million barrels sold of micro beers of the 197.9 million barrels sold, representing .0086%. He said the micro beers were not as popular today as they were going to be in the future; the leading regional micro beer brewery in the USA sold a total of 104 barrels. He stated additional contract brewing represented 600,500 barrels in 1993. He had experienced continuous shortages because of allocations or limited supply by the brewery.

Mr. Grosovich reported micro beers were expensive, from $6-$10 for a six pack and were not in demand in many areas, especially rural areas and were not sought by many retail licenses. He maintained the cost of solicitation of sales to microbreweries and distributors was too much, they couldn't sell what they did not have. He announced looking forward would be the major noise created by the massive advertising budgets of the major

breweries, none of whom were anxious to lose a single customer to a competitor. He reported the big three had an unlimited supply and required their wholesalers to saturate their territories and were required by law to solicit sales from 75% of the retailers; only a minority of retailers ever purchased micro beers. He said the wholesaler was restricted by microbrewery quantities available for sales. He handed out the Piper Jaffray, Specialty Beer report, **EXHIBIT #10.**

Opponents' Testimony:

Mike Parker, President and Owner of Penningtons, Inc., contended the provisions of Montana law that required the 75% call ratio were consistent with the entire body of law that governed this industry. He said some of the trade abuses that **Mr. Nash** spoke of didn't exist here because Montana had such laws and compliance with the law had not been a problem.

Don Brocopp, Montana Beer and Wine Wholesalers, Anhauser-Busch Distributor, Billings, affirmed he also distributed 20 some micro beers in the Billings area which he offered to all his accounts. He had several accounts that didn't want to buy from him and he didn't call on them. He did call on 75% of accounts every two weeks. He stated the history of the three tier system went back before prohibition. They didn't have alcoholic beverages in the grocery stores so the product went straight to the tavern. He asserted the big breweries controlled the tavern and they sold only the breweries product; they became bankers and financiers.

Mr. Brocopp stated eventually, the economics of the times fostered prohibition. At the end of prohibition they put in the second tier, the wholesalers. He related the state governed the wholesalers by co-leasing the area between the brewer and the retailer. He said the states, by controlling the wholesalers, did not allow the big breweries to tie themselves to the retailer. He explained this system had worked very well since prohibition. **Mr. Brocopp** expressed if the Committee passed this bill, they would just be back in five years wanting to change it to a million barrels.

(Tape: 1; Side: B)

Ed Brandt, Beer and Wine Wholesaler, Bozeman, said his understanding of commerce was it should benefit the general good. It seemed that in Montana, by definition, that meant the general customer as a whole. He said this bill; however, was to benefit one wholesaler in Missoula, Montana and that didn't seem to him to be effective commerce. He related the current system had 37 wholesalers covering the State of Montana, visiting their accounts about once every week or two weeks. He declared in his case they serviced four southwestern counties in Montana, i.e., 260 alcohol accounts in that territory. They represented some of the companies listed as microbreweries on the exhibits that were given to the Committee.

Mr. Brandt maintained they offered the products from those microbreweries to each and every one of their accounts. He said their approach was to let the consumer decide if they wanted the product. VEHRS couldn't service everyone and cover the area so they ended up discriminating against some of the retailers. He stated the customer choice should be the key here and not a decision whether or not a wholesaler wants to service an account. They lose money on the smaller accounts also, so, it was not economical to service the smaller accounts. He claimed there was no benefit to the accounts in going with a smaller distributor.

Mr. Brandt declared this legislation would serve to limit customer choice by allowing one company to decide which retailers they wanted and how long they served them. This legislation benefited one company and did not benefit consumers in general and **Mr. Brandt** said customers would be the losers.

Mr. Brandt inquired at what point did a company brew over 250,000 barrels? For the Committee's information, a barrel of beer contained 13.777 cases of beer; 250,000 barrels equals 3.5 million cases of beer. He explained there was no market in the State of Montana which sold that much beer; no one wholesaler in Montana sold over a million cases. He said last year, they sold about 620,000 cases total. He conveyed there was no reason to amend one law to accommodate one company when the current system was providing excellent service for all the people in the marketplace. He maintained when a brewer reached 250,000 barrels, it started to lose sales; there may not be 250,000 barrels of Olympia sold in the State of Montana. He inquired if that made it a micro beer.

Mysta Tucker, Earl's Distributing, Missoula, declared service was the reason they were in the business. He alleged this law provided unfair advantages to some distributors.

Steve Browning, Anheuser-Busch Companies, read his written testimony, **EXHIBIT #11.** He distributed the most recent report from Anheuser-Busch describing their operation and philosophies, **EXHIBIT #12.** He also distributed a report describing the economic contributions made to Montana by Anheuser-Busch, **EXHIBIT #13.**

Bill Watkins, Zipp Distributing, Missoula, said they were all small business people and were capable of adapting their businesses and services to fit a certain need. Therefore, he stated, they could adapt for the need of a consumer to have a handcrafted specialty product.

Tom Hopgood, Montana Beer and Wine, declared he had heard a lot about government meddling this morning. He declared the alcohol distribution industry was an industry which was closely intermingled with government, actually, this industry was one of the most government controlled industries around. He maintained prohibition came out of certain abuses in the alcohol beverage

industry. He contended prohibition was repealed and the Federal Congress enacted the Federal Alcohol Act in which it shared power over the alcohol distribution industry with the states.

Mr. Hopgood asserted the key component was the three tier system. He said under that system a brewer was prohibited in having an interest in a wholesaler's operation. He stated a wholesaler was prohibited from having an interest in the retailer's operation. He related part of that three tier system was interbrand competition; part of it was embodied in the call ratio statute. He conveyed there was much data available about the economics of beer distribution. He explained an attempt to go outside of a territory was referred to, in their industry, as a free ride. He stated a particular business would get a free ride due to the efforts put into the territory by another's business.

Mr. Hopgood read the summary from the chapter, "Thus in the long term, free riding may not reduce prices to consumers, may make markets less competitive by raising entry barriers, lower the number of retail outlets selling beer, and reduce consumer welfare by reducing the number of brands offered. Previous brewers and wholesaler investments in brand development were eroded and established local businesses were weakened. It was no wonder that brewers were just as interested in eliminating free riding as were their wholesalers."

Mr. Hopgood declared this bill was sought on behalf of one distributor in Montana who distributed a brand called RED HOOK ALE. He said Red Hook was owned in part, 23%, by Anheuser-Busch. They were rapidly expanding and he hoped that some day they did pass that 250,000 barrel limit. He would like to see the brand as one that was highly competitive. They were in litigation on this in a law suit that was brought by VEHRS distributing. He related they believed this distributors territory was too large and should be brought down to the point where they were able to comply with the call ratio statute.

Mr. Hopgood had discussed this bill with the Director of Governmental Affairs for the Miller Brewing Company and they wanted to be on record as opposing **SB 239**.

Informational Testimony: None.

Questions From Committee Members and Responses:

SEN. STEVE BENEDICT asked **Mr. Nash** if it seemed to him that in the testimony the problem was they weren't getting enough beer from the microbreweries. He inquired how would this bill help get more beer from the breweries? **Mr. Nash** said it wouldn't, but it would relieve them of the 75% call ratio. They were one of the first distributors to specialize in micro beers. He replied there was no reason to go to 75% of the retail outlets if he had nothing to sell to them.

SEN. BENEDICT also said the current statute said nothing about selling the beer, it just stated you must offer it. **Mr. Nash** related that he offered the beer to 100% of his customers. He was an independent business man and didn't know when he entered into a contract with someone that he was supposed to be only in that territory. His contract obligation with the microbrewers was to take their beer to accounts that appreciated their beer and could afford their beer.

SEN. BENEDICT asked **Mr. Nash**, if rather than change the statute, wouldn't it be easier for him to hire a larger sales force and get out and cover the territory. **Mr. Nash** replied that wasn't the problem, the problem was that the product wasn't there to sell. He couldn't sell beer he didn't have.

SEN. BENEDICT stated that this bill would not make the microbreweries produce more beer. **Mr. Nash** stated the 250,000 barrels was just a limit. He said it allowed the microbreweries to establish a fair and equitable amount of beer to distribute. These beers were handcrafted. They were very small and very expensive; expensive to make, expensive to sell and expensive to represent. **Mr. Nash** stated not everybody wanted them.

SEN. TERRY KLAMPE stated to **Mr. Geiszler**, it seemed **Mr. Browning** was implying that a person had to sign a contract stating a specific territory and outlining certain obligations he had to fulfill and if he didn't fulfill them he's in error. **SEN. KLAMPE** said he was looking at the statute and was unable to see that. **Mr. Geiszler** stated there was a statute that required a written agreement between the brewer and the wholesaler; it required certain provisions, one was a definition of what the territory included, another was a procedure by which the brewery must follow if they were going to terminate the distributor. He explained the law did not require the contract between the brewer and wholesaler to mandate the 75% call. **Mr. Geiszler** maintained the 75% call was outside the required provision of the written agreement between the wholesaler and brewer.

SEN. MIKE SPRAGUE contended he didn't pretend to be a lawyer but he knew there was one law on the books and he would like **Mr. Geiszler's** response, and that was if he believed in the law of supply and demand? **Mr. Geiszler** responded "certainly".

SEN. CASEY EMERSON asked **SEN. VAN VALKENBURG** to explain when this law was originally passed. He said he was in the tool business and there was a federal law that said businesses had to sell to anybody who came to their business. He questioned if this law applied to Buttrey Foods when the law was passed? He stated if it could have been covered by federal law, this bill would never have been necessary. **SEN. VAN VALKENBURG** stated he was not that familiar with federal law. He referred the question to **Gary Blewett, Administrator of the Liquor Division**, who replied he could not answer directly whether Buttrey's could have been stopped through other laws at that time. He thought the issue at

that time was whether or not Buttrey's could enter into the wholesale business without going through the wholesale tier network. **Mr. Blewett** alleged this bill blocked them from doing that.

SEN. EMERSON then asked if there was a law that prevented the brewer, wholesaler, and retailer from being separated. **Mr. Blewett** replied that was a law then; however, a wholesaler/distributor would have brought the beer to a central warehouse and Buttrey's would distribute further from there.

SEN. SPRAGUE asked **Mr. Browning**, as a lawyer, if he also believed in the law of supply and demand. He replied "yes". **SEN. SPRAGUE** asked about the law of diminish and return. **SEN. SPRAGUE** thought it would be best if they carried enough brands to justify the size of the territory they were calling on.

SEN. KLAMPE asked if this law was being enforced right now. **Mr. Blewett** said that he had never had an inquiry about the law until the Vehrs case. He contended the law was such that it was used when responding to complaints, then they inquired if there was a violation.

Closing by Sponsor:

SEN. VAN VALKENBURG in closing indicated a number of things that needed to be said that either had not come out in the testimony or had not been elicited from the questions the Committee asked. He contended they needed to be addressed. He asserted apparently the existing wholesalers had the state divided up into their territories and they liked their little system. They were guaranteed that territory and they didn't have to worry about anyone else coming into that territory and competing with them. **SEN. VAN VALKENBURG** expressed that was certainly a convenient situation in which they did business, except, perhaps the interbrand competition. It was a nice system for them and he was not trying to change that system. He was wondering, when moving into the 21st century, if it was really a great system for the consumers. He declared it had been nearly 70 years since prohibition was repealed and there were considerable changes that had occurred elsewhere since then.

SEN. VAN VALKENBURG asserted Vehrs Distributing came along and said there was a market niche in which to sell a product out there that really wasn't being met. They saw a chance to have a relatively small business grow. From the "big guys" perspective, **Mr. Nash** was trying to take on too much. He's sneaking over into Helena or going to Bozeman and trying to sell beer where their system didn't allow him to sell beer. They said **Mr. Nash** and Vehrs should reduce their territory. He told the Committee that should ensure they didn't violate the call frequency statute, it protected the consumers and made sure the consumers beer was fresh at purchase time; as if **Mr. Nash's** beer wasn't fresh when the consumers purchased it and paid up to $10 a six pack for it.

He asserted that was obviously not the case. It was a way to justify something he thought they got without the legislature really intending for them to have had.

SEN. VAN VALKENBURG declared they passed a bill that in essence protected those distributors from Buttrey Foods coming in and setting up their own competitive operation. Now they wished to use that to stop a very small business from having any opportunity to expand. **SEN. BENEDICT** asked some questions about how this bill would produce more beer and **Mr. Nash** quite honestly answered -- "it didn't; it would stop this tier of distributors from saying one could not go to Helena and sell their product to **Mr. Roberts**. They could not offer it to Toppers in Helena, because that was too big a territory. He stated if they went to Helena, they had to call on every retailer account there in order to do this. **Mr. Nash** said they did that now, but it was very inefficient because he knew he didn't have the product to supply them. He maintained it was a waste of time to offer the product to people who didn't want it, that didn't help the consumer at all, and it probably added to the cost of the micro beers he was selling because of his wasted time. **Mr. Nash** said this was a big established business vs. a relatively new start-up business issue.

SEN. VAN VALKENBURG stated **Mr. Browning** pointed out to him in response to **SEN. KLAMPE's** inquiry that on line 12 of the bill there was a drafting error in the statute referred to, which was 221, and really should have been 222 and that was the reason why there was confusion.

{Tape: 2; Side: A}

Proposal Request and Discussion by Committee Members:

SEN. LORENTS GROSFIELD, SD 13, Big Timber, appeared to ask the Committee to consider requesting a committee bill. He stated this was brought to his attention after the deadline for bill draft requests. He declared it dealt with flow through swimming pools, such as Fairmont Hot Springs, Chico Hot Springs, etc. He related apparently one of them had a quality problem with the water and the Department of Health determined under current law, all swimming pools were required a certain amount of chlorination and other things. He explained most of the hot spring pools in the State of Montana replenished themselves within a period of time of less than 8 hours; i.e., the entire amount of water turned over in less than 8 hours. He contended chlorinating a hotel swimming pool was one thing; chlorinating a natural hot springs was another. He maintained people went to natural hot springs because they liked the idea of the water being natural. He reported this was from the economic perspective. He alleged, more importantly, environmentally, they would be dumping a tremendous amount of chlorine into the groundwater.

SEN. GROSFIELD contended the pool owners had been meeting with the Department of Health. They finally came up with a consensus approach as a starting point for the bill, which was agreeable to both the Department and the pool owners. This was drafted by the Department and **SEN. GROSFIELD** added a part about "statement of intent" because there was some rule making needed. He talked to **Director Bob Robinson, Department of Health & Environmental Sciences**, this morning and **Director Robinson** told him the statement was fine. He would request that this Committee consider doing this as a committee bill. He had thought about going to the Public Health Committee but it was his understanding they were overloaded, with 22 more bills coming to them.

SEN. TERRY KLAMPE asked if Lolo Hot Springs had contacted **SEN. GROSFIELD.** He replied that he believed they were involved in it.

SEN. GARY FORRESTER asked **SEN. GROSFIELD** what his interest was in this bill. He replied that Chico Hot Springs was in his district and a friend of his, who lived in Glasgow, was trying to help the hot spring owners out.

Motion/Vote: **SEN. BENEDICT MOVED TO DRAFT A COMMITTEE BILL TO ADDRESS SEN. GROSFIELD'S CONCERNS.** The motion **CARRIED UNANIMOUSLY** on voice vote.

EXECUTIVE ACTION ON SB 177

Motion: **SEN. SPRAGUE MOVED TO ADOPT THE AMENDMENTS, EXHIBIT #14.**

Discussion: **SEN. BENEDICT** asked **Mr. Campbell** if **Greg Van Horssen** had brought his amendment to him. **Mr. Campbell** reported that he had not received anything from **Mr. Van Horssen.**

SEN. SPRAGUE asked if **SEN. FOSTER** had approved the amendments. **Mr. Campbell** stated that he had not changed the amendments **SEN. FOSTER** had proposed and handed out at the hearing. He merely put them in the proper form.

SEN. KLAMPE claimed that being one who dealt with this all the time in his profession, he was here to tell the Committee this bill would not achieve what it was intended to accomplish.

SEN. SPRAGUE asked if this bill would at least improve the situation a little bit. **SEN. KLAMPE** stated that it may make a small improvement. He would have liked to have seen Blue Cross offer an example of how they intended to deal with this.

Vote: The motion to **AMEND SB 177 CARRIED UNANIMOUSLY** on oral vote.

Motion/Vote: **SEN. WILLIAM CRISMORE MOVED SB 177 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on oral vote.

for performance contract. **SEN. BENEDICT** asked if the 7 years was addressed in the amendments. **Mr. Campbell** stated it had been left in the bill.

SEN. SPRAGUE stated when the seven years were brought up in the hearing, the discussion pointed out there were times when seven years were needed. He declared after that was stated no one had pushed for an amendment to the seven years provision..

SEN. BENEDICT explained it gave the Department some discretion on the item. **SEN. MILLER** asked if the discretion was for more than seven years. **SEN. BENEDICT** answered "no". **SEN. MILLER** stated they had discretion up to seven years.

Vote: The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SEN. BILL CRISMORE MOVED THAT HB 163 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. KLAMPE** asked why the seven year provision was granted. **SEN. EMERSON** replied the Department had stated there were cases where they needed seven years to make it worthwhile. **SEN. BENEDICT** stated he could see from where **SEN. KLAMPE** was coming from and yes, it might help a small business get the contract because they could go ahead and purchase the equipment knowing they would have seven years to recapture cost. He said it also tied up the bid so no one else could get involved in the process for seven more years. **SEN. KLAMPE** stated seven years seemed to be an awful long time to tie up a bid. **SEN. SPRAGUE** stated, as he recalled, the Department had stated they rarely use the seven years and they only used it when the bidding was worthwhile. **SEN. CRISMORE** stated the department had said at the hearing the only time they used it was to encourage someone to bid.

Vote: The motion that **HB 163 BE CONCURRED IN AS AMENDED CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON HB 138

Motion/Vote: **SEN. FORRESTER MOVED THAT HB 138 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on voice vote.

EXECUTIVE ACTION ON SB 239

Motion: **SEN. WILSON MOVED SB 239 DO PASS.**

Discussion: **SEN. KLAMPE** commented someone in the hearing had implied these people were not living up to their contracts, as it said in the law, but it didn't say that in the law; it just said

they had to promise not to use more than one distributor. He expressed that had nothing to do with them having to live up to their contract. He announced many implied there was a mistake in the statute. **SEN. KLAMPE** said if there was a mistake in the statute it was still the law. He had a hard time accepting the testimony of the bigger distributors who implied the small guys weren't living up to their contract, therefore they should be held responsible.

SEN. CRISMORE inquired if this would affect some new micro beer that came on the market in very limited amounts. **SEN. BENEDICT** stated he visited with friends from Missoula, who testified for this bill, but he could not support them. They said they were having trouble servicing the area they had at present. He didn't see how this bill was going to help that problem. He maintained one wholesaler from Missoula was trying to paint the picture the little guys were the only ones who cared about servicing the microbrewery market. He said that was not the case at all. He pointed out the big distributors carried micro beers also. He related the point was this one distributor had an exclusive with one microbrewery for the entire State of Montana and they could not service the whole state. He claimed they then came to the legislature with a bill and asked the law to be changed.

SEN. KLAMPE stated the entire statute should be stricken. He thought it was anti free enterprise. He expressed the intent was to help the small businessperson who couldn't live up to the law as written. He was surprised **SEN. BENEDICT** was against the small businessperson here. **SEN. BENEDICT** stated he couldn't see how this bill was going to help them service their clients any better.

SEN KLAMPE replied he was missing the intent. He explained the intent was not to help them service their clients; the intent was to leave them alone. He related those unrealistic requirements should not be placed on them. **SEN. BENEDICT** countered by stating allowing distributors to enter someone else's territory was not right.

SEN. SPRAGUE stated that he was in agreement with **SEN. KLAMPE.** He said the law of supply and demand stated if the demand was greater than the available supply, a specialty market or product was created. He remarked that situation was not unusual. He maintained this could become an intimidation factor. He stated this bill encouraged the small entrepreneurial aspect, whether it was economically feasible to do volume or it wasn't economically feasible. **SEN. SPRAGUE** said it was a specialty item and it had nothing to do with keeping up with the demand of the product. He conveyed if he decided to keep up with the demand, then he must keep up with the big boys.

SEN. WILSON asked if he was brewing beer up in Missoula and there was a major distributor in Billings, why would the Billings distributor be threatened by him coming into the market and

selling the same product which he might distribute. **SEN. BENEDICT** stated there was nothing in this bill that would help such a situation. He stated this bill was about one distributor who wanted to monopolize the entire state. **SEN. BENEDICT** contended this was the wrong place to bring such a bill.

SEN. EMERSON stated he had talked with **Gary Blewett, Administrator of the Liquor Division.** He informed the committee all the distributors did in their area was call on 75% of the people. He asked **Mr. Blewett** if there was anything stating how that area was to be set up and the reply was nothing at all was stated. **Mr. Blewett** said they could get around the law by drawing up a contract with the brewery that defined their territory to suit their desires; the territory could include 3 retailers in Helena, 4 in Billings, and etc. He agreed with **SEN. BENEDICT** the law wouldn't do any good, but by the same token he believed the whole law was bad.

SEN. SPRAGUE commented this Committee was actually talking about a wholesaler here and about a three tier system and the distributor chain of events. He declared if a small microbrewer could not get a distributor to handle his product and also meet the demands **SEN. BENEDICT** was talking about, then he was out of the market. He replied in this particular case they were talking about a small microbrewer who wanted to supply the restaurant mentioned and wanted to do it legally. He said, since the distributor would not handle his product because he couldn't meet his demand for supply, then he wanted his product to be a specialty product and perhaps only be in the restaurant market.

SEN. MILLER agreed that the statement above was somewhat true, but they also testified that every area had three distributors. He said this gentleman had three distributors he could go to in order to market this product; was that correct?

SEN. FORRESTER asked **Mr. Campbell** how a beer distributor could operate now since Anheuser-Busch had chosen to define a distributor area. He asked did a beer distributor have a property right to that area as defined under state law? **Mr. Campbell** answered he was not sure, but he would assume it was a contract because they entered into an agreement that defined a territory and would have a duration, and the contract "wasn't forever". **SEN. FORRESTER** asked if it would be logical to assume when a beer wholesaler sold his business, the territory would remain the same for the buyer as the seller, and how would the territory ever get renegotiated?

{Tape: 2; Side: B}

SEN. SPRAGUE stated there was a gentleman's agreement, and in Montana the small outlying cities were nothing to fight over.

SEN. WILSON stated in light of the confusion he would like to **withdraw his motion** and take more time to talk to the people involved with the bill.

SEN. BENEDICT declared he would like to offer a table motion which would put the bill on the table. He conveyed if, at a later time, someone wanted to bring it back, it could be discussed. He thought in the interest of time it would be best to table the bill.

Substitute Motion/Vote: **SEN. BENEDICT MOVED A SUBSTITUTE MOTION TO TABLE SB 239.** The substitute motion **CARRIED 5-4** on a roll call vote **(#1).**

EXECUTIVE ACTION ON SB 187

Discussion by Committee Members: **SEN. FORRESTER** inquired what the holdup was on the dial-up bill. **CHAIRMAN HERTEL** stated there were a great deal of negotiations taking place.

SEN. BENEDICT added there seemed to be reasons for bringing it forward if some adjustments could be made to it. He stated he had gone to both sides and talked with them. Yesterday, he put together a proposal for both sides and both sides accepted the proposal; therefore, the **Justice Department** and the **Attorney General** were drafting amendments to the bill that would satisfy everyone's concerns, although no one would walk away from the bill happy. He said the amendments should be up in the next few days.

CHAIRMAN HERTEL remarked there was work being done on the bill and possibly by the end of the week the Committee could take action on it. **SEN. KLAMPE** stated with those comments he still knew no more than he did two minutes ago. He asked if they were trying to increase the tax credit? **CHAIRMAN HERTEL** rendered such a question was inappropriate. He again stated there were negotiations being held between the two groups. **SEN. KLAMPE** countered by saying the Committee already knew that. **CHAIRMAN HERTEL** stated again there were further negotiations taking place and as far as exact information, it would be available at the proper time.

No further executive action was taken at this time on **SB 187.**

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 2/3/95 BILL NO. SB 239 NUMBER 1

MOTION: Senator Benedict made substitute motion to Table SB 239

NAME	AYE	NO
STEVE BENEDICT, VICE CHAIRMAN	X	
WILLIAM CRISMORE	X	
CASEY EMERSON	X	
GARY FORRESTER		X
TERRY KLAMPE		X
KEN MILLER	X	
MIKE SPRAGUE		X
BILL WILSON		X
JOHN HERTEL, CHAIRMAN	X	

SEN:1995
wp:rlclvote.man
CS-11

EXHIBIT NO. 1
DATE 2/8/95
BILL NO. SB 239

FACTS IN SUPPORT OF

SENATE BILL NO. 239

February 8, 1995

1993 SALES OF 31 GALLON BARRELS
(As reported in 5/16/94 Edition of "Modern Brewery Age")

Brewer's Name	Sales (31 Gallon Barrels)	1993 Market Shares Sales
Anheuser-Busch	87,300,000	45.95%
Miller Brewing Co.	44,024,000	23.17%
Adolf Coors Co.	19,828,000	10.44%
Stroh Brewery Co.	12,825,000	6.75%
G. Heilman Brewing	8,900,000	4.68%
Genessee Brewing	2,150,000	1.13%
Falstaff, Pearl & General	1,000,000	.53%
Sierra Nevada Brewing	104,325	.05%
Anchor (Steam) Brewing	92,000	.05%
Pete's Brewing	75,000	.04%
Red Hook Ale	73,810	.04%
Widmer Brewing	40,519	.02%
Full Sail Brewing	38,159	.02%
Hart Brewing	33,151	.02%
Portland Brewing	16,600	.01%
Bridgeport Brewing	16,020	.01%
Alaskan Brewing	10,000	.01%
Celis Brewing	10,000	.01%
Rogue Ales	9,887	.01%
Deschutes Brewing	8,564	.00%
Hales Ales	8,366	
Yakima Brewing	8,000	
Thomas Kempfer Brewing	6,925	
Kessler Brewing (Helena, MT)	3,300	
Couer d'Alene Brewing	2,425	
Brewski's Gaslamp	1,905	
Bayern Brewing (Missoula, MT)	1,900	
Spanish Peaks Brewing (Bozeman, MT)	875	

Most, if not all of the above listed beers are being distributed in Montana.

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wholesaler, and in general, by increasing the wholesaler's security and stake in the business, the survival of this statutory middle man is better assured.

Q. What was the rational or what are the reasons for the introduction of the legislation which resulted in the call frequency or call ratio statute?

A. The reasons-I think I should give you a broader answer to that question first and then focus in on why that particular section was part of it.

The reason the whole Save the Center campaign was conceived was the General Brewing Company, a nationwide brewer of some size and what's known as the second tier after the Anheuser-Busch, Miller and Coors level of brewers, General Brewing Company had come up with the idea of making a private label beer called Alpha Beta, when the Buttreys chain was owned by American Food Stores, I think, the Skaggs Alpha Beta system. Alpha Beta was, for a time, the store label of choice in Buttreys' warehouses. The wholesalers of General Brewing products, such as Lucky Lager and generic beer and so forth in the state were not opposed to a brewer making a private label for a retailer as such, as long as, A, that brewer offered to market it in the normal way through wholesalers on the wholesaler's trucks and to be available, whether it would be desired very much or not by other retailers, to be on that wholesaler's order list as another

Page 18

product that they carry.

However, the Buttreys organization and General Brewing decided to have a run at it to attempt to place the quantities of Alpha Beta beer into Buttreys' central warehouse in Great Falls and distribute it in Buttreys trucks to about 30 stores around the state and not to pay any regard to who General Brewings' eight or ten wholesalers were, other than in the Great Falls market, but simply to throw the store brand on-on to the Buttreys truck.

Now, what could that lead to in the Association's judgment, there would be no reason why a retailing chain, once it had developed this system for its own brands of beer, might not say, let's get some more economic value out of this truck and this truck driver for our retail distribution, let's get all the other brands of beer on that truck, too, and then we'll just take care of all the shelving and all the pulling of stale beer and quality control arrangements, we won't need wholesalers, we'll just get all our beer the way we get our peas and our corn. And once you would lose the supermarkets that way, the wholesalers would be left with very small retail accounts, taverns, and independent C stores that would not have the resources to require or to utilize their own distribution systems, but there would be far fewer wholesalers left when the retail business was cut down to that degree.

Page 19

Hence, because of Alpha Beta beer and the proposed mode of distribution of it by the Buttreys organization, the Association filed some protests with the liquor division, there were some hearings, there were some understandings reached that certain status quo matters would be held in abeyance pending a resolution of the applicable law by the 1987 legislature. Our response to that was to draft and ultimately to secure the enactment of House Bill 30.

It did grandfather the arrangement made for Alpha Beta beer by the wholesaler in Butte who had undertaken to bring it in and have it come to rest in his warehouse in Butte, but a couple of years later would change hands of the Buttreys ownership, and so forth, the Alpha Beta brand was no longer of interest to the new management and that grandfathe clause expired.

The call frequency provision, which had been in a Nevada statute for a number of years in almost exactly this wording, about 75 percent of all retailers, at least every certain period of time, I don't know what Nevada says now, whether it's two weeks or monthly or whatever, we thought that was desirable because without it, you could have arrangements such as we've seen in California more recently where a retailer can, with a large amount of buying power, can go to a brewery, which is hard up enough to need that business, and say, find us some straw, some dummy wholesaler,

EXHIBIT 1
DATE 2-8-95
SB 239

Page 20

or I wouldn't know what kinds of wholesalers do this in California in terms of characterizing them, maybe they do have independent ownership, but in any event, allow them to cherry pick only our retail outlets. The Stroh brewery, for instance, has arrangements to sell Old Milwaukee only to Vons and Lucky Food stores and Ralphs and a few other big supermarket chains in California at a price which undercuts the brands that Old Milwaukee typically competes with because that wholesaler only calls on those supermarket chains. It will go through Fresno, let's say, and pass 18 convenient stores and 15 taverns, not even slow down, then it will get to a Luckys or a Vons and pull in with two or three pallets of Old Milwaukee.

California prohibits quantity discounts and has what's known as a price posting statute which, typical in many other states and the way they regulate beer, in Montana has neither, but some of the alternative arrangements we have had, I think, are preferable to getting into direct price regulation, but in California, in this case I'm giving you, the Old Milwaukee wholesaler must post a given price, say $9 a case, and not change that price for a certain period of time, and then may not give a quantity discount for any great huge volume of beer purchased. The reason that the supermarket chains and Stroh have been able to do what they have done in California, though, is that they don't worry

16-3-217. Purposes. The legislature finds and declares that the purposes of 16-3-218 through 16-3-226 are to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputations of their products through quality control arrangements.

16-3-218. "Distribute" defined. As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute" means to deliver beer or wine to a retailer's premises licensed to sell beer or table wine.

16-3-219. Dock sales restricted. A beer wholesaler or a table wine distributor may not deliver beer or wine to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through his employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of his license or a photocopy of his license personally obtain from any wholesaler's warehouse such quantities of beer as he and the wholesaler may agree to buy and sell.

16-3-220. Wholesalers' service obligations -- applicability. (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to 16-3-221(3) shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks.

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to such retailer at least every 3 weeks.

(3) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer party to such an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2-8-95
BILL NO. SB 239
(Presented by Tim Seiszler)

THE REDHOOK ALE BREWERY

3400 Phinney Avenue North Seattle, Washington 98103 206/548-8000 Fax 206/548-1305

January 21, 1994

Greg Carter
Tei Nash
Vehrs Mountain State Beverage
1700 Rankin Street
Missoula, MT 59802

Dear Greg and Tei,

Redhook Ale Brewery is very thankful for the efforts of you and your staff throughout the past year. You have exceeded all goals set, and placed the Redhook name on the lips of many Montana Residents!

We are experiencing that same growth in other markets as well, so much so, that the existing Redhook Brewery is insufficient to meet the popularity of our beers.

For this reason we have placed all distributors on a monthly allocation. It is our suggestion that you keep this allocation in mind when setting our sales strategies. It seems proper to maintain the existing Redhook accounts and to be very selective in the pursuit of new accounts.

We appreciate your patients and we hope to have our second brewery producing beer by 1995!

Cheers!

Keep up the great work,

Mark Marzano
Redhook Ale Brewery

SENATE BUSINESS & INDUSTRY
EXHIBIT NO 3
DATE 2-8-9
BILL NO. SB 239
(Presented by Tim Ziegler)

THE REDHOOK ALE BREWERY
3400 Phinney Avenue North Seattle, Washington 98103 206/548-8000 Fax 206/548-1305

May 6, 1994

TO: OUR HIGHLY VALUED DISTRIBUTORS
FROM: THE BREWERY
RE: SALES FORECASTING

Work on our Woodinville brewery is proceeding rapidly and smoothly. We are on target to begin brewing there in August. The attached photo is the building as of May 1st. Until we have the additional capacity it is important to manage our inventory carefully to insure that everyone gets the beer they need. The following is an estimate of the amount of beer we feel we can guarantee you per month.

	Cases	1/2 BBL
Redhook ESB	558	161
Blackhook	42	2
Ballard Bitter	85	4
Wheathook	95	13

We understand this is probably not all the beer that you could sell and we look forward to the day when we can fill all of your orders.

Thank you for your cooperation.

Mark Marzano
Sandy Monblat
Thomas Price
J.B. Rossit

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 2/8/95
BILL NO. SB 239

WHITEFISH
BREWING COMPANY

To Whom it may concern;

As a licensed producer of handcrafted micro-brewed beer in the state of Montana, I would like to commit my support for Senate Bill 239.

I feel the current Montana Code (16-3-220) unfairly places a burden on small producers of specialty beers to conform to "Call Frequency" statues for which we neither have the product to support nor the public acceptance.

Being a specialty product producer we are unfairly compared to major domestic producers of beer (ie, Budweiser, Miller, Coors) and are forced to comply with offering our products to 75% of all licensed accounts, thus putting us in jeopardy of being in infraction of current law.

I urged you to vote for the revised statue and support Senate Bill 239.

Thank you for your support.
Sincerely,

Jay Fulcher
(Owner)

P.O. BOX 1949 WHITEFISH, MONTANA 59937 · (406) 862-2684

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 2/8/95
BILL NO. SB 239

SIERRA NEVADA BREWING CO. INC.

Paul Camusi Ken Grossman

January 25, 1995

Greg Carter
Vehrs Mountain State Beverage
1702 Rankin
Missoula, MT 95802

RE: 1995 Sierra Nevada Bigfoot Barleywine Style Ale

Dear Greg:

It is almost that time again -- time for the release of the 1995 Sierra Nevada Bigfoot Barleywine Style Ale! We will begin shipping Bigfoot into your warehouses the first week of March.

While we are producing more cases than last year, the demand will still be greater than the supply. Therefore, we have set up an allotment system based upon last year's sales:

Last Year's Bigfoot Case Sales	35
This Year's Bigfoot Case Allotment	70

Kegs will be very scarce and will be allotted on a special request basis. No promises are being made for Bigfoot keg supply. Also, we will not be producing either the Sierra Nevada Pale Bock or the Sierra Nevada Summerfest Beer this year.

We are sorry for any inconvenience created by the limited supply of Bigfoot or the lack of Pale Bock and Summerfest. However, we are looking forward to another great year with significant sales growth and are reserving our brewing capacity for the year-round ales.

1075 East 20th Street • Chico, California 95928
(916) 893-3520 • FAX 893-1275

Your allotment of Bigfoot will be shipped to you in its entirety the first or second week of March. Please contact me to make shipping arrangements.

Thank you for your efforts.

Sincerely,

Steve Harrison

Steve Harrison
Marketing & Sales Director

SH/cb

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 6
DATE 2/8/95
BILL NO. SB 239

BAYERN
BREWING, INC.

To Whom It May Concern,

As a licensed producer of handcrafted micro-brewed beer in the state of Montana, I would like to commit my support for Senate Bill 239.

I feel the current Montana Code (16-3-220) unfairly places a burden on small producers of specialty beers to conform to "Call Frequency" statutes for which we neither have the product to support nor the public acceptance.

Being a specialty producer, we are unfairly compared to major domestic producers of beer (ie, Budweiser, Milller, Coors) and are forced to comply with offering products to 75% of all licensed accounts, thus putting us in jeopardy of being in infraction of current law.

I urge you to vote for the revised statute and support Senate Bill 239.

Thank you for your support.

Sincerely,

Jurgen Knoller

100 RAILROAD • MISSOULA, MONTANA 59802
P.O. BOX 8043 • MISSOULA, MONTANA 59807-8043
(406) 721-8705 • FAX (406) 549-6444

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 7
DATE 2/8/95
BILL NO. SB 239

February 7, 1995

To Whom it May Concern:

As a licensed producer of handcrafted micro-brewed beer in the state of Montana, I would like to commit my support for Senate Bill 239.

I feel the current Montana Code (16-3-220) unfairly places a burden on small producers of specialty beers to conform to "Call Frequency" statues for which we neither have the product to support nor the current public acceptance.

Being a specialty product producer we are unfairly compared to major domestic producers of beer (i.e., Budweiser, Miller, Coors) and are forced to comply with offering products to 75% of all licensed accounts, thus putting us in jeopardy of being in infraction of current law.

I urge you to vote for the revised statue and support Senate Bill 239.

Thank you for your support,

Sincerely,

Jennifer Bellard/pro

Jenjifer Bellard
Brewmaster
Rock'n M Brewing Co.
401 E. Main
Belgrade, Mt.
59714
406-388-2007

EXHIBIT NO. 2
DATE 2/8/95
BILL NO SB 239

Topper's Market

607 West Custer Ave. Helena, MT 59601

to: Van Valkenberg
re: house bill 239

Dear Sir; My name is Art Galloway, owner operator of Topper's Mkt. located in Helena, Montana. I am writing to you in suport of house bill 239, due to the short time notice of the hearing I am unable to be there to speak. I hope that this short note will reach you before the committee has made any decisions. The reasons I support the bill are that I believe in free interprise, I think that the small distributors and brewers need to be free to compete in the open market place without having to be involved with the big 3 breweries. Most of the distributors in Montana did not start out big enough to furnish product ot 75% of their markets. Every town in Montana had small brewers and distributors. I can recall the time that the distributor of Oly beer in Helena, did it from the back of a pick-up truck, he couldn't supply 75% of the Helena market. His business was run out of his basement. Would you deny him of anyone the right to start his own private business? That distribtor is one of the biggest in Helena now. For my own self I have built a successful mkt. by having one of these small distributors to deal with for beers from small breweries known as Micro-breweries and International brands as well. The large distributor did not want to bother with the effort required to find or to stock these products, but he would like to hold them out of his market now that their proving to appeal to a small responsive section of that market. And you must realize that is the big 3 talking thru him. The reason is simple; when Micro-breweries started back in the early 1980's the big breweries and their distributors thought that the American public would shallow their advertisements that they had the all Americian beer and we wouldn't want the hand-crafted brews, but they were wrong. The responsive public were searching for ust that sort of brew. Again the reason is simple, most of the people that grew up in the 1960's and 70's were educated and were able to afford travel overseas. In their travels most tasted brews of other countries and after coming home longed to have them available in their own towns and country. Out of that need came the Micro-breweries and yes normally he cannot produce enough to meet the demand and may not want to, and thats not wrong either. He may make such a fine brew that to expand would mean to cheapen his product. Remember that he is filling the tastes of a small percentage of the responsive public. This is not a new concept, the German, English, Cecz and other foreign brewers have been doing this for over 100 years. In Germany alone there are 2200 such breweries. Most of these

Topper's Market

607 West Custer Ave. Helena, MT 59601

are family owned and operated. The United States and Montana were no different. At one time there were over 2I00 breweries in the states and Montana had 82 of their own. After prohibition and the Second World War the number had dropped to less than I00. These two events in history were the curse of the small hand-crafted local brewery. My customers and most of the people that I have had contact with in the last ten years have clearly spoken, and with their support of my business have demonstrated this. I know this first hand because I have built my business on this knowledge. To limit this small growing industry and the small distribtors that they depend on is unjustfivable, when Montana is so desperate for any kind of econmic growth. You must realize as do I, that not every retailer will want to put the kind of time and capital investment that is required to do this kind of a business but there are people like myself that are willing to do it and we need the small distributor that is willing to do the same thing. It lends itself to the small locally owned business. At the brewery level, distributor and retail level the business of hand-crafted brews is labor intensive, including the education of the public as to the value of micro's. The quality of these beers allow them to be drank only in moderation because of the non-pasteurization and full protein nature of the brew. It will not have preservitants included. This reason alone lends the product to be handled by the small distribtor and retailer. It would be impossible for the small distributor to put the product into 75% of the available locations because of limited production of products,and shorter life span of the products. We need the amount of barrels set at 250,000 so that we can include all and not exclude most of the brewer's and small distributors, that are doing business with a small responsive share of the market. For your own information let me talk briefly on the major's, they say that the Micro's have only 3% of the market share. Thats false. We know that they have almost I2% of it and that it is growing in leaps and bounds. In the last year the number of breweries in this country grew to 750 from the I980's when there were only 40 in the country, and they are continuing to be more built. The majors know that by the year 2013 at the present growth rate that new beers introduced will be almost 70% of the business. Is Montana going to grow with the rest of the country. I hope so. I know that I intend to. I could go on forever about the current and past history of beer in this country and Montana, so I'd stop. I hope that this note helps you and the committee reach what should be a fair and equal decision

Sincerely Yours;

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 9
DATE 2/8/95
BILL NO. SB 238
(presented by Tim Hark)

Brewers Keep Marketing

Ad expenditures climb nearly 11% in first half '94; more dollars devoted to new products

Beer industry expenditures were up 10.9 percent through the second quarter of 1994, with many brewers shifting their dollars from older brands to new products.

That's what data from Leading National Advertisers, Inc. and Wheat First Butcher Singer Research show, according to *Beverage Industry* Director of Research John C. Maxwell, Jr.

Anheuser-Busch spent $23.9 million rolling out Budweiser Ice Draft beer, while spending for Bud Dry beer nearly dried up, dropping 96.9 percent to $400,000 from $12.9 million, LNA reports. A-B also dropped its spending by two-thirds on advertising for segments categorized as "Budweiser Beers" and "Anheuser-Busch Beers." Spending was up, however, for Budweiser regular and Light beers, to $7.3 million. LNA did not record a figure for the same period in 1993.

Miller trod a similar path, spending $19.4 million for Miller Lite Ice, $15.4 million for Molson Ice and $8.1 million for Icehouse in the first six

Continued on page 48

Brewers' Production (millions of barrels)

	1986	1987	1988	1989	1990	1991	1992	1993	1994E	YEAR-END CAPACITY
Anheuser-Busch	72.3	76.1	78.5	80.7	86.5	86.0	86.2	86.4	87.5	95.0
Miller	38.5	38.9	40.3	41.9	43.0	42.8	41.6	42.2	42.6	49.0
Coors	15.2	15.7	16.5	17.7	19.3	19.5	19.5	19.6	19.7	25.0
Stroh	22.8	21.6	20.5	18.4	16.3	14.7	13.5	12.7	11.8	23.0
Heileman(a)	16.1	15.0	14.6(c)	13.0	12.3	10.3(d)	9.3	9.0	8.4	13.0
Pabst	6.7	6.5	6.1	6.6(e)	6.6(e)	6.7(e)	7.1(e)	7.2(e)	6.8(e)	11.0
Genesee	3.0	2.8	2.6	2.4	2.2	2.2	2.1	2.1	1.8	3.5
Latrobe	-	0.5	0.5	0.6	0.7	0.8	0.9	1.1	1.2	1.5
Pittsburgh	0.9	0.8	-	-	-	1.0	1.0	1.0	1.0	1.2
Hudepohl-Schoenling	-	-	-	-	0.5	0.4	0.4	0.4	0.4	1.0
Schmidt(b)	1.7	1.5	-	-	-	-	-	-	-	-
All Others	4.4	1.9	2.0	2.1	1.2	2.1	4.6	4.5	5.6	6.0
	181.6	181.3	181.6	183.4	188.6	186.5	186.2	186.2	186.8	229.2
Less Tax-Free Exports and Military	2.9	3.4	3.4	4.0	4.3	4.6	5.5	5.4	6.8	
	178.7	177.9	178.2	179.4	184.3	181.9	180.7	180.8	180.0	
%Increase/Decrease	1.8%	(0.4%)	0.2%	0.7%	2.7%	(1.3%)	(0.7%)	(0.6%)	(0.4%)	
Imports	8.8	9.4	9.4	8.7	8.8	7.9	8.3	9.2	10.6	
CONSUMPTION	187.5	187.3	187.6	188.1	193.1	189.8	189.0	190.0	190.6	
%Increase/Decrease	2.2%	(0.1%)	0.2%	0.3%	2.7%	(1.7%)	(0.4%)	0.5%	0.3%	
Per capita consumption (gallons)	24.2	24.0	23.8	23.6	24.0	23.3	23.0	22.9	22.7	

(a) Bond Corp. Holding Ltd.
(b) Heileman acquired Schmidt in May 1987.
(c) Includes Schmidt and Pittsburgh and excludes Evansville brands.
(d) Beginning in 1991, excludes Pittsburgh. For 1990, had Pittsburgh been excluded, comparable volume would have been 11.3 million barrels.
(e) Pabst only. Does not include the following:

	1990	1991	1992	1993	1994
Pearl, Falstaff and General	1.4	1.4	1.2	1.0	0.8

NOTE: Brewer production numbers include exports and exclude non-alcoholic beer; Miller total excludes Molson.
SOURCE: John C. Maxwell, Jr., Wheat First Securities; Copyright *Beverage Industry*, January 1995.

EXHIBIT NO. 10
DATE 2/8/95
BILL NO. SB 239

PIPER JAFFRAY

December 1994

SPECIALTY BEER

Brewing Opportunities

Allan F. Hickok
Managing Director
612-342-6344

Rob J. Nicoski
Associate
612-342-5517

Minneapolis

PIPER JAFFRAY

Kenneth A. Schlenker
Investment Executive

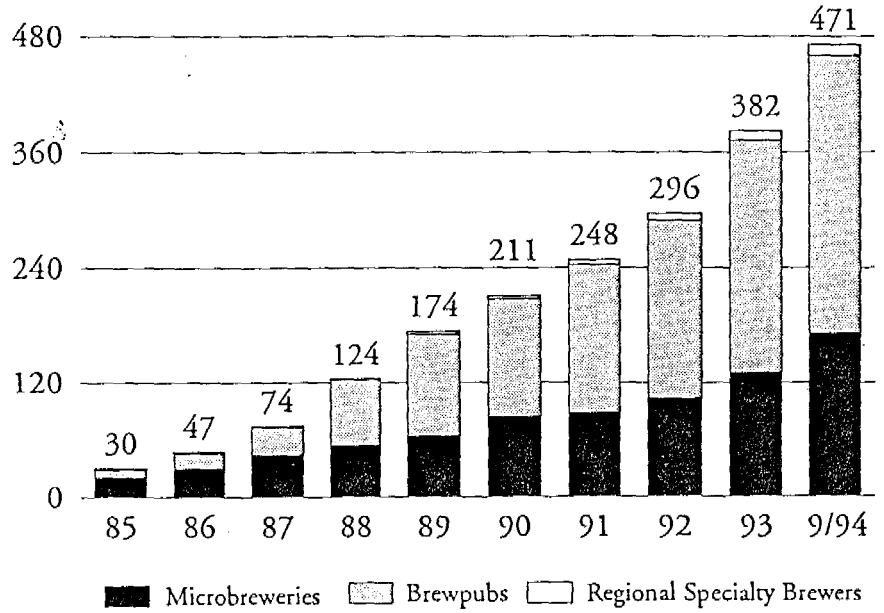
Piper Jaffray Inc.
224 North Broadway
P.O. Box 1795
Billings, MT 59103
406 252-2106
1 800 444-0577

INVESTMENT THESIS

- **The Character And Composition Of The Industry Is Changing**—Both the supply and demand side of the beer industry are changing. We are in the midst of a powerful, grassroots consumer trend toward the consumption of high-quality, specialty, or handcrafted malt beverages. Consumers are willing to pay a premium for alternatives to mass produced "American Pilsner" beer. We believe explosive consumer demand will allow the specialty beer segment of the industry to grow at an extremely rapid rate over the next few years, even though overall industry sales growth remains flat.

- **Tremendous Growth Potential In Specialty Beer Segment**—Following several years of strong growth, specialty beer sales increased 40% in 1993, yet only account for roughly 1% of the almost 200 million barrel per year domestic beer market. Industry projections suggest continued growth of at least 40% annually for the specialty beer segment as specialty beer sales whittle market share away from national brands and imports. Capturing just a fraction of specialty beer sales amounts to enormous business opportunity.

U.S. CRAFT BREWER UNITS



% Change:	+57%	+57%	+68%	+40%	+21%	+18%	+19%	+29%	+23%

—Since 1985, the number of domestic craft brewers has been increasing at a compound annual rate of 37%.

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SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 2/8/95
BILL NO. SB 239

TESTIMONY IN OPPOSITION TO SB 239 ON BEHALF OF ANHEUSER-BUSCH COMPANIES

BY R. STEPHEN BROWNING

SENATE BUSINESS & INDUSTRY COMMITTEE FEBRUARY 8, 1995

I am appearing today to express the opposition of Anheuser-Busch Companies (AB) to SB 239.

In Montana we have a strong populist tradition that often transcends politics and political philosophy. Many of us are suspicious of large out-of-state entities. Whether it's the federal government or a large multi-national corporation, many of us have been taught to be wary. My client, a St. Louis-based diversified company, is the largest brewer in the world. Hopefully, AB's size and domicile will not unduly influence the Committee when considering the concerns I am about to express about this bill[1].

With regard to SB 239, it is important to emphasize to the Committee that AB complies with the laws of the State of Montana. AB is very conscious of Montana's laws governing brewers and beer wholesalers. Those laws are specified in considerable detail in Title 16, Chapter 3, Part 2 of the Montana Code Annotated.

SB 239 seeks to alter the laws applicable to brewers and wholesalers. The impetus for this bill, reportedly, arises from a situation where a Montana wholesaler apparently was unable to meet the requirements of Montana law. This wholesaler either has a territory that is too large or its capital is too small to allow it to contact at least 75% of the retailers within its territory at least every three weeks, as required by Montana law. Rather than reducing the size of its territory or hiring the staff needed to call on the minimum number of retailers, as required by law, this particular wholesaler has elected to seek what is, in effect, special legislation to change the requirements applicable to its operations.

Likely, the brewer and the wholesaler relationship that prompted this legislation is memorialized in a written agreement which defines the boundaries of the wholesaler's territory and sets out the responsibilities of the respective parties. A contract of this type would have had to be negotiated and signed by both parties, pursuant to 16-3-222 MCA, which establishes mandatory provisions for brewer-wholesaler contracts. One of the contract provisions required

[1] To give the Committee a better insight to AB's operations and accomplishments, particularly with regard to the economic it bestows upon the people of Montana, I am providing the Committee with two pieces of promotional literature. The first is AB's most recent report, describing its wide-ranging operations and articulating the company's basic philosophies. The second is a more dated report, describing the economic contributions that AB makes to Montana.

by Montana law is the size and extent of the area in which the wholesaler may sell or distribute the products of the brewer to retailers. Presumably, both the brewer and the wholesaler are aware of the state laws applicable to the sale of beer in Montana.

To appreciate why my client objects to the apparent inability of the brewer and the wholesaler to comply with Montana's laws, it is important for the Committee to understand AB's philosophy towards beer wholesalers. AB is traditionally committed to the maintenance of a three tiered system for producing and selling beer, a system that separates the brewer, the beer wholesaler and the retailer. AB has contracts with more than 900 beer wholesalers, which provide AB with the most effective and extensive beer distribution system in the brewing industry.

AB's wholesalers are responsible for the marketing, sales and distribution of the company's beer brands within their respective areas. AB's wholesalers implement programs to develop brand awareness for all AB products and provide the finest retailer service in the industry to ensure that only the freshest quality beers reach consumers. AB's wholesalers enjoy a unique relationship built on years of mutual concern and cooperation. The AB Wholesaler Advisory Panel, comprised of representative wholesalers, meets with the company's top management on a regular basis.

Montana State statutes governing beer sales were enacted "to assure continued interbrand competition in malt beverage sales through competing independent wholesalers and to assure breweries the ability to protect the reputation of their product through quality control arrangements." Anheuser-Busch operates in Montana in a manner that fulfills these purposes, and it only sells beer in Montana to its wholesalers. These AB wholesalers maintain exclusive territorial contracts based on the proven capacity of the brewer and wholesaler to comply with and fulfill the purposes and requirements of Montana's laws governing the sale of beer in Montana.

Some of the Committee members may have seen Anheuser-Busch's recent ads concerning microbreweries. These ads remind viewers that AB used to be a microbrewery, but it whipped its competition and got bigger because it concentrated on maintaining brewing quality while improving the competitive price of its product.

As I noted in my opening remarks, many of us in Montana have been taught that big is bad and that small is good. However, we also have been taught some other fundamental principles: Namely, that it is important to be fair, not to ask for special treatment and to comply with the law. I would urge that those basic principles guide this committee when considering the appropriateness of this legislation. Put another way: If the contractual arrangements between the microbrewery and the wholesaler that prompted this bill are such that state law cannot be met, then they should alter the terms of their franchise agreement rather than expect the legislature to change the laws affecting their business.

Thank you for considering this testimony, and please vote no on SB 239.

EXHIBIT 12
DATE 2-8-95
SB 239

Anheuser-Busch Companies

1994
1995

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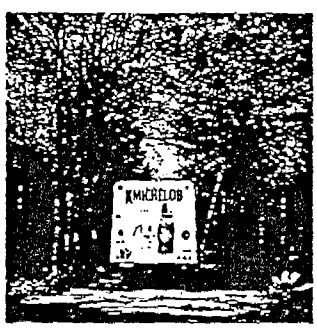
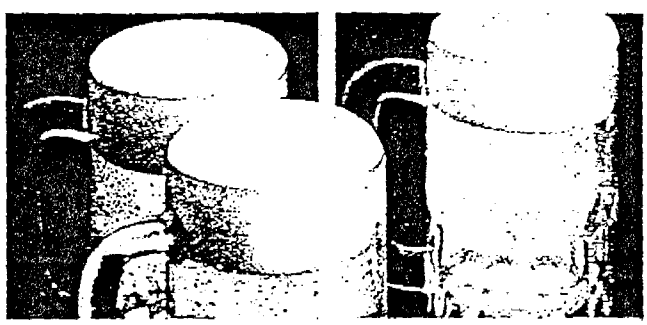
SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 13
DATE 2/8/95
BILL NO SB 239

Montana Economic Impact

ANHEUSER-BUSCH COMPANIES





A Contribution in Montana

High quality of life. A rich cultural heritage. An abundance of recreational activities. These are just some of the reasons that make the Treasure State such a great place to live and work. From the state's rich soils to its modern cities, Montana is recognized for its diverse economy, geographic splendor and hard-working people.

Anheuser-Busch Companies, Inc., is proud of its partnership with Montana. The company, its employees and statewide beer distributors are dedicated to preserving Montana's high quality of life and contributing to its economy.

Beer wholesalers, retailers and consumers in Montana have played an important role in helping Anheuser-Busch establish its diverse brands—Budweiser, Bud Light, Michelob, Michelob Light, Michelob Dry, Michelob Classic Dark, Busch, Natural Light and LA—as the world's best-selling family of quality beers.

With corporate headquarters in St. Louis, Anheuser-Busch Companies, Inc., is a diversified corporation with annual sales exceeding $9 billion. In addition to brewing the world's finest quality beers, Anheuser-Busch is involved in can manufacturing, baking, family entertainment, snack foods and professional baseball.

Anheuser-Busch beers are distributed throughout Montana by a network of 14 independent wholesalers. In 1988, these wholesalers distributed 2.3 million cases of beer, accounting for 23.4 percent of all beer sold in Montana. These operations have a combined work force of approximately 140 employees and an annual payroll of $3.1 million, pay $1.3 million in federal, state and local taxes and purchase more than $600,000 in supplies from fellow merchants. The wholesalers serve nearly 3,000 retail accounts in Montana.

Diversified Operations

Busch Agricultural Resources

Busch Agricultural Resources, a wholly-owned subsidiary of Anheuser-Busch which has the primary role of supplying raw materials for the brewing and food making process, operates barley, elevator and seed operations in Fairfield and Fromberg. Anheuser-Busch purchases more than $37 million in barley from Montana farmers annually. This product is used in the production of Anheuser-Busch beers.

To date, the company has invested $4.3 million in its Montana-based facilities. The "ripple effect" of these investments has meant additional economic opportunities throughout the state.

Social Commitment

Anheuser-Busch's commitment to quality and excellence is reflected not only in its products, but also in its efforts on behalf of the communities it serves.

Charitable Contributions

A recent national survey rated Anheuser-Busch Companies among America's top 20 corporate charitable contributors. The company and its charitable foundations provide more than $20 million each year in contributions to programs throughout the country. Anheuser-Busch is a national sponsor of the Muscular Dystrophy Association, and since 1980, the company and its wholesalers have raised $22 million for the Jerry Lewis Labor Day Telethon. The broad range of civic and community programs supported by Anheuser-Busch and its

- Colleges, universities and vocational training
- Hospitals, health and welfare organizations
- Arts and cultural programs
- Other civic and charitable programs

Recent contributions have been made to Carroll College, Teton Medical Center and the C. M. Russell Museum.

In February 1988, Anheuser-Busch became the Rocky Mountain Elk Foundation's first major corporate sponsor with a gift of $500,000 to the group's North American Habitat Fund. This is the largest single donation the company has made to a conservation group. Anheuser-Busch's gift went to work immediately to help with the Robb Creek acquisition, an elk habitat in southwestern Montana totaling more than 34,000 acres in purchased and leased land.

In 1984, Anheuser-Busch gave $154,000 to Ducks Unlimited to finance its 1985 Artist of the Year competition. Prints entered in the competition were auctioned at more than 4,000 events, and more than $5 million was raised to help purchase and preserve wetlands. One of the first waterfowl habitats to be preserved through this effort was near the Benton Lake area in Montana. In 1987 a 393 acre area at Benton Lake was declared a National Fish and Wildlife Refuge by the U.S. Fish and Wildlife service.

EXHIBIT 13
DATE 2-8-95
SB 239

Support For Minority Organizations

Anheuser-Busch's social commitment includes involvement with minority communities in Montana. The company supports scholarship and educational programs, youth development organizations, athletic and cultural programs, civil rights efforts and economic development through business and banking relationships.

As the founder and national sponsor of the Lou Rawls Parade of Stars Telethon, Anheuser-Busch has helped the United Negro College Fund raise more than $60 million in gifts and pledges. Anheuser-Busch also supports the Urban League/Anheuser-Busch Scholars program, the National Association for the Advancement of Colored People, and participates in hundreds of local projects nationally to foster civic improvement and cultural awareness.

Alcohol Awareness Programs

Anheuser-Busch's alcohol awareness programs, which collectively are known as "Operation ALERT," are the most comprehensive in the brewing industry. The company and its wholesalers spend several million dollars annually on consumer education programs.

A key element of "Operation ALERT" is the "Know When to Say When" film which encourages people to drink responsibly. The film, available through Anheuser-Busch wholesalers, has been viewed by more than two million people. In addition, since 1985 Anheuser-Busch has been reminding television viewers and beer drinkers to "Know When to Say When." This campaign delivers an estimated one billion responsible drinking impressions per year. Other elements of the program include:

- **Students Against Driving Drunk (SADD),** encourages a healthy exchange of information between parents and their teenagers about drinking. Anheuser-Busch is the major national corporate sponsor.
- **I'm Driving,** a program to encourage the designated driver concept.
- **Your Alcohol IQ,** a video program underwritten by Anheuser-Busch to educate the public about facts and myths concerning alcohol. The program, hosted by Michael Tucker and Jill Eikenberry of "LA Law", is offered to the public through video stores nationwide.
- **The Buddy System,** a program designed to urge college students of legal age who drink to drink responsibly—and to help out if their friends abuse alcohol.

In addition, Anheuser-Busch also contributes to many other alcohol awareness programs and organizations, including the Alcohol Beverage Medical Research Foundation.

Environmental Commitment

Anheuser-Busch has long been committed to doing its part to contribute to a clean and healthy environment. This commitment is manifested in a variety of ways.

Many of Anheuser-Busch's Montana wholesalers are active in a voluntary recycling program established by Container Recovery Corporation (CRC), a subsidiary of Anheuser-Busch. The money earned from the collection of aluminum cans often benefits local charitable organizations and serves as an important source of income for the needy. More than 1 million pounds of aluminum are collected each year in Montana under the CRC program, resulting in payments of nearly $600,000 to consumers. CRC is the leading recycler of

aluminum beverage cans in America, recycling more than 300 million pounds of used aluminum cans in 1988.

Photodegradable Retainer Rings and Ecology Lids

Anheuser-Busch was the first brewer to convert totally to ecology packaging. All of the company's canned beer is sold in containers with one-piece ecology lids and photodegradable six-pack retainers.

Air Pollution Control

All Anheuser-Busch breweries use highly efficient dust collection systems to prevent the escape of fine grain material to the atmosphere.

Sports

As one of the world's leading corporate sponsors of sports, Anheuser-Busch is actively involved in sporting events at all levels throughout Montana. The company and its wholesale network have supported a diverse range of programs, both amateur and professional, including the Snow Bowl, Marshall and Lost Trail Area ski meets and the Top Rank ESPN pro boxing series.

Anheuser-Busch Wholesalers in Montana

'ngs	Intermountain Distributing Company
.zeman	Cardinal Distributing
Butte	Thompson Distributing, Inc.
Conrad	Triangle Distributors, Inc.
Dillon	Beaverhead Bar Supply, Inc.
Glasgow	Sinclair Produce Distributing, Inc.
Great Falls	Devine & Asselstine, Inc.
Havre	Havre Distributors, Inc.
Helena	Sandy Macs Distributing Company
Kalispell	Flathead Beverage Company, Inc.
Lewiston	Johnson-Nicholson Company
Miles City	M & C Beverage, Inc.
Missoula	Zip Beverage, Inc.
Shelby	Shelby Distributors

Anheuser-Busch Companies, Inc. Worldwide

Anheuser-Busch Companies, Corporate Office–St. Louis, Mo.

Anheuser-Busch, Inc.–Breweries, Wholesale Operations, Tourist Attractions

Metal Container Corporation–Can/Lid Manufacturing

Container Recovery Corporation–Container Recycling/Processing

Busch Agricultural Resources–Malt Production, Rice Storage/Milling, Farm Operations, Barley/Elevator/Seed Operations

Anheuser-Busch International, Inc.–Licensed Brewing and Export

Campbell Taggart, Inc.–Bakery Operations, Refrigerated Products, Frozen Food Products, International Operations

Eagle Snacks, Inc.–Snack Production

Busch Entertainment Corporation–Family Entertainment

Busch Properties, Inc.–Real Estate Development

St. Louis National Baseball Club–Baseball

Civic Center Corporation–Stadium Operations

Busch Creative Services Corporation–Business and Marketing Communication

St. Louis Refrigerator Car–Railcar Repair

Manufacturers Railway Company–Transportation Services

International Label Company (Joint Venture)–Label Production

DATE February 8, 1995

SENATE COMMITTEE ON Business and Industry

BILLS BEING HEARD TODAY: HB 138 Rep. Hanson

SB 239 Senator Van Valkenburg

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dan Elliott	PSC	HB138	✓	
ED BRANDT	MBWA	SB239		✓
Mysta S. Tucker	MBWA	239		✓
Mike Parker	MBWA	239		✓
Jack E. Josepolt	MBWA	239		✓
Jim Greiszler	Vehs.	239	✓	
Tom Hopgood	Mt. Beer Wholesalers	SB239		✓
DON BROCOPP	" " " "	SB239		✓
Greg CARTER	Vehes	SB239	✓	
Mike Harrington	MPC	HB138	✓	
Eugene A. Brooks	B.Y.E Bev.		✓	
Tim Nesbitt	Vehs MAN. STATE	239	✓	
Tom Hopgood	Citizens Telecom Co.	HB138	✓	
JR McPherson	PacifiCorp	HB138		

Bill WATKINS VISITOR REGISTER MT Beer & Wine SB239 ✓

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

Ms. Baker contended it was more along the lines of an anti-trust action, so they decided it would be better for the Department of Justice to handle it. The problem was that neither department had an anti-trust enforcement unit. She discussed that with the sponsor. By making the rule making authority discretionary, rather than mandatory, and taking out some of the enforcement issues, they thought the fiscal impact would be lessened. However, no matter where it was put, there could be some fiscal impact if state enforcement was used. They looked at a couple of other health care related bills floating around that put more enforcement authority in the Department of Justice. **Ms. Baker** stated the bill could dovetail with those to make it more consistent.

Vote: The motion to **AMEND SB 313 PASSED** unanimously on voice vote.

Motion/Vote: **SEN. EMERSON MOVED SB 313 DO PASS AS AMENDED.** The motion **CARRIED 7-2** on voice vote with **SEN. FORRESTER** and **SEN. WILSON** voting "NO".

EXECUTIVE ACTION ON SB 239

Discussion: **CHAIRMAN HERTEL** stated the bill had been tabled but was moved off the table.

Motion: **SEN. CRISMORE MOVED SB 239 DO PASS.**

Discussion: **SEN. CRISMORE** stated the only reason he requested the bill be brought back and asked for a do pass, was because he continually received calls from small microbrewers all over the state who claimed they were being discriminated against. He admitted he did not have all the answers but knew he needed to respond to the concern that had been expressed, so he brought the bill out for another debate.

SEN. EMERSON said he, also, had received a number of calls but handled them by referring to the contract between the distributor and the brewery, and the fact that the district could be defined in any way he wanted and get around the 75% call rule. It only required more paperwork. He would rather see it go that route than change the law.

SEN. BENEDICT stated the bill had been discussed a great deal. It concerned a distributor in Missoula who wanted to be more than he was capable of being. He tried to rally his accounts to use an hysterical approach and he had everyone calling the committee members to get the bill passed. Ninety-nine percent of the other distributors had no problem. The microbreweries would not be helped by this bill. It was the distributor who couldn't service what he had.

SEN. MILLER stated this was government at its worst. They were picking out a few people they regulated and a few they didn't, rather than treating everybody the same. If the bill was bad the way it was set up, it should be redone, but to pick and choose those whom were affected was wrong.

Vote: The motion **SB 239 DO PASS CARRIED 5-4** on roll call vote (#2).

EXECUTIVE ACTION ON SB 290

Discussion: **Bart Campbell** explained the amendments, **SB029001.ACE**, number 2 inserted 'each', number 3 inserted 'individual'. The amendments would be changed on number 2 after the word 'each', 'individual' should be inserted.

Motion/Vote: **SEN. BENEDICT MOVED TO ADOPT AMENDMENTS SB029001.ACE.** The motion **CARRIED 7-2** on voice vote with **SEN. FORRESTER** and **SEN. WILSON** voting "NO".

Motion: **SEN. SPRAGUE MOVED SB 290 DO PASS AS AMENDED.**

Discussion: **SEN. EMERSON** stated he spoke with the opponents after the hearing and they replied this changed in '83 or '85 and was a minimal change; but if they changed it back, it would be a big change. He pointed out if it was minimal to change it, it would be minimal to change it 2/3 of the way back. The change would be more fair if a person who deserved a break, would get the break.

SEN. FORRESTER added he talked to Claudia Clifford and she replied her interpretation still stood. She knew a young woman could be discriminated against. **Mr. Hopgood** said he would have an amendment here today that would guarantee there would be no price differentiation between a young woman and young man. The committee didn't see that amendment here this morning, do they?

SEN. BENEDICT stated he didn't recall that being said.

Vote: The motion **SB 290 DO PASS AS AMENDED CARRIED 6-3** on voice vote with **SEN. WILSON, SEN. KLAMPE,** and **SEN. FORRESTER** voting "NO".

EXECUTIVE ACTION ON SB 311

Motion: **SEN. MILLER MOVED SB 311 DO PASS.**

Discussion: **CHAIRMAN HERTEL** stated the fiscal note was now available. He added **SEN. FORRESTER** pointed out the bill appeared to have a contingent void in the clause to consider. He knew the people downstairs wanted the chairman of the committee to make certain the committee was aware of that and brought it out. He

SENATE STANDING COMMITTEE REPORT

February 16, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 239 (first reading copy -- white), respectfully report that SB 239 do pass.

Signed: John Hertel
Senator John R. Hertel, Chair

Amd. Coord.
Sec. of Senate

401312SC.SPV

MONTANA SENATE
1995 LEGISLATURE
BUSINESS AND INDUSTRY COMMITTEE
ROLL CALL VOTE

DATE 2-16-95 BILL NO. 239 NUMBER 2

MOTION: SB 239 DP

NAME	AYE	NO
STEVE BENEDICT, VICE CHAIRMAN		✓
WILLIAM CRISMORE	✓	
CASEY EMERSON		✓
GARY FORRESTER	✓	
TERRY KLAMPE	✓	
KEN MILLER		✓
MIKE SPRAGUE	✓	
BILL WILSON	✓	
JOHN HERTEL, CHAIRMAN		✓
	5	4

SEN:1995
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CS-11

HEARING ON SB 239

Opening Statement by Sponsor:

SEN. FRED VAN VALKENBURG, SD 32, Missoula County, stated this bill was an act providing that the beer wholesaler interbrand competition law does not apply to brands produced in limited quantities. He also supplied amendments. **EXHIBIT 1** .

Proponents' Testimony:

Tom Hopgood, Executive Secretary, Montana Beer & Wine Wholesalers Association, said this bill would exempt distributors of micro brews from the statutory requirement that distributors call on 75% of the retailers in their territory at least every three weeks. The Association opposed this bill in the Senate. The bill as amended would protect the integrity of the call ratio statute as well as allow micro brew distributors to sell and deliver their products without an undue burden. The sound public policy of maintaining healthy interbrand competition is protected by the amendatory language. At the same time, the micro brew distributor is allowed to conduct their business without the burden of meeting the requirements of the call ratio statute. To do so would cause the performance of a meaningless act. **EXHIBIT 2**

Joe Roberts, Mountain State Beverage and Buy Beverage, said there had been substantial discussion in the last week and a compromise had been reached that the larger distributors and wholesalers are able to support. They also supported the amendments.

Dave Hewitt, Clausen Distributing, said on behalf of the Montana Beer and Wine Wholesalers they supported this bill.

T. Nash said he was an owner of a distributorship which handled the micro beers and a compromise was negotiated which would be very fair for a business which stands today and a business which would come in the future.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

The sponsor closed.

Closing by Sponsor:

The sponsor closed.

VICE CHAIRMAN MILLS relinquished the Chair back to CHAIRMAN SIMON

EXECUTIVE ACTION ON SB 239

Motion: REP. PAVLOVICH MOVED SB 239 BE CONCURRED IN. REP. PAVLOVICH MOVED THE AMENDMENTS.

Vote: Motion carried to adopt the amendments 18-0.

Motion/Vote: REP. PAVLOVICH MOVED SB 239 BE CONCURRED IN AS AMENDED. Motion carried in favor 18-0.

EXECUTIVE ACTION ON HB 567

Motion/Vote: REP. FORBES MOVED HB 567 DO PASS. REP. FORBES MOVED THE AMENDMENTS. Motion carried to adopt the amendments.

Motion/Vote: REP. FORBES MOVED HB 567 DO PASS AS AMENDED. Motion carried 18-0.

EXECUTIVE ACTION ON SB 327

Motion: REP. PAVLOVICH MOVED SB 327 BE CONCURRED IN.

Discussion:

REP. LARSON said he supported the bill and said there is a need for continuing education in the chiropractic business.

TAPE 2, SIDE B

REP. JACK HERRON said he opposed the bill because a person goes to four years of school and then chiropractic school and having known a recent graduate from chiropractic school, this student found it necessary to move to Alaska in order to repay his debts because Montana would not allow a recent chiropractor to establish a new business.

REP. MILLS said no one said what the further education was going to be from the testimony on the bill. If this additional education will give them more classes in health care and related fields to better do their job or does it mean just get a degree and then go to chiropractor school.

REP. EWER said he was not going to support the do pass motion. He said the actual licensure requirements do not require a bachelor of arts degree. As far as people not being sufficiently

HOUSE STANDING COMMITTEE REPORT

March 1, 1995

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 239** (third reading copy -- blue) **be concurred in as amended.**

Signed: *Bruce Simon, Chair*

Carried by: Rep. Ellingson

And, that such amendments read:

1. Page 1, line 12.
Strike: "generally available"

2. Page 1, line 13.
Following: "weeks."
Insert: "However, if the brand of beer for which the wholesaler is appointed is a product of a brewer or beer importer whose products are not generally available, the wholesaler shall, at least every 3 weeks, call on and offer that brand to as many retailers within that territory as is reasonably possible given the amount of that brand that is available to the wholesaler."

3. Page 1, lines 18 and 19.
Following: "section," on line 18
Strike: the remainder of line 18 through "year." on line 19
Insert: "a brewer or beer importer's products are not generally available if:
(a) all of the brands of a brewer or beer importer shipped to a wholesaler during the most recent calendar quarter total less than 600 barrels;
(b) all of the brands of a brewer or beer importer

Committee Vote:
Yes 18, No 0.

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Thurs 3/1

shipped into the state total less than 1,200 barrels in each of the 2 consecutive preceding calendar quarters; and

(c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels per year."

-END-

DATE 3-1-95
SB
HB 239

Amendments to Senate Bill No. 239
Third Reading Copy

Requested by Senator Fred Van Valkenburg
For the Committee on Business and Labor

Prepared by Stephen Maly
February 28, 1995

1. Page 1, line 12.
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Following: "section," on line 18
Strike: the remainder of line 18 through "year." on line 19
Insert: "a brewer or beer importer's products are not generally available if:

(a) all of the brands of a brewer or beer importer shipped to a wholesaler during the most recent calendar quarter total less than 600 barrels;

(b) all of the brands of a brewer or beer importer shipped into the state total less than 1,200 barrels in each of the 2 consecutive preceding calendar quarters; and

(c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels per year."

DATE 3-1-95
~~HB~~ SB 239

Montana Beer & Wine Wholesalers Association
Post Office Box 124 • Helena, Montana 59624 • Telephone (406) 442-4451

MONTANA BEER & WINE WHOLESALERS ASSOCIATION
STATEMENT IN SUPPORT OF PROPOSED AMENDMENTS TO SB 239
March 1, 1995, House Business and Labor Committee

SB 239 would exempt distributors of micro brews from the statutory requirement that distributors call on 75% of the retailers in their territory at least every three weeks. The Montana Beer & Wine Wholesalers Association opposed this bill in the Senate. After lengthy discussions between the principals of Vehr's Mountain State Beverage (a micro brew distributor from Missoula) and the Montana Beer & Wine Wholesalers Association, the language which is the subject of the proposed amendment was prepared.

Although the Montana Beer & Wine Wholesalers Association vigorously opposed SB 239 as originally drafted, the bill, as amended, would protect the integrity of the call ratio statute as well as allow micro brew distributors to sell and deliver their products without an undue burden.

The call ratio statute was enacted in 1987 in response to the situation where knock off brands were being produced for large retailers. These knock off brands were sold only to the large retailers. This was contrary to the concept of interbrand competition which is the basis of our three-tier system of alcohol distribution. This system ensures that the various wholesalers, competing head-to-head in exclusive territories, would maintain a competition based price for beer along with the variety, quality and quantity the consumer expects, demands and deserves.

In calling on only a few selected large retailers, the wholesaler drastically cut its operating costs and obtained an artificial advantage over the distributors in the same area who called upon, sold to, and delivered beer to all retailers in the area. Additionally, the small retailer was put at an unfair competitive advantage with the large retailer by the fact that the knock off brand distributor did not call upon that small retailer.

The call ratio statute remedied this situation by requiring all distributors to call upon and sell to 75% of the retailers in their area at least every three weeks. The statute had the intended effect of engendering fair interbrand competition between all distributors in an area and has in fact maintained reasonable beer prices along with outstanding quantity, quality and freshness. Additionally, the small retailer has been

TOM K. HOPGOOD, Helena
Executive Secretary/Counsel

afforded the same competitive advantages as the large retailer is allowed.

The sound public policy of maintaining healthy interbrand competition is protected by the amendatory language. At the same time, the micro brew distributor is allowed to conduct his or her business without the burden of meeting the requirements of the call ratio statute when to do so would cause the performance of a meaningless act.

Respectfully submitted.

Tom K. Hopgood, Executive Secretary
Montana Beer & Wine Wholesalers
Association

TKH/vjz

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor DATE 3-1-95

BILL NO. SB 239 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Tom Hopgood	Mt Beer & Wine Wholesalers	✓ Amend	
Dave Hamill	Clausen Distributing	✓ Amend	
Joe Kerwin 219 Vaughn Helena	Self	✓	
Bruce Spencer 6 South Park B-10 Helena	Self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FO
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.